

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED  
Release copies to District

Date 8-31-99

Surname [REDACTED]

Date: JUL 22 1999

Employer Identification Number: [REDACTED]

Contact Person: [REDACTED]

ID: [REDACTED]

Contact Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED] under the laws of [REDACTED]. Your Articles [REDACTED] state that your purposes are to assemble and exchange information as a fraternal association of computer users, to conduct educational seminars and symposiums, to collect dues, to sponsor and engage in trade shows, to solicit vendors, to rent software and hardware, and to conduct all matters directly or indirectly related or incidental thereto.

In the copy of your bylaws dated [REDACTED], you state that your membership shall consist of members who shall be employees of corporations, partnerships, or other entities who are licensed to use the [REDACTED] product suite. Your bylaws also state that membership is limited to those persons who use [REDACTED] software or are affiliated with its use as their primary profession and/or are enrolled in an educational program involving [REDACTED] classes or studies.

In your application, you state that your activities are to educate [REDACTED] users in technical matters concerning software application and function, and to create opportunities to meet peers in their area and exchange technical information, and collect user feedback for the purpose of problem identification and correction. You also state that you meet during the day three times annually, one each in February, June, and October, and that you feature presentations by users and hardware and software suppliers. You state that you also have a vendor show in October which represents an opportunity to meet with vendors associated with [REDACTED]. You further state that your revenues are generated solely by collecting a fee from vendors at your annual vendor show.

In your membership brochure, you state that [REDACTED] is the independent voice for users of software produced by [REDACTED] of [REDACTED]. You state that [REDACTED] is the sole entity recognized by [REDACTED] as the official representative of its customers; you were formed two years after the introduction of [REDACTED]. You also state that you are affiliated with the national [REDACTED] group as a [REDACTED], and that you were chartered for the purpose of, among others, collecting user feedback for the purposes of program identification and correction, as well as software enhancement.

In your [REDACTED] newsletter, your president states that one of your tenets is the exchange of information, but that he feels that the exchange had become unidirectional - from the board members to the group. He states that as [REDACTED] users, the board members can make educated guesses as to what

[REDACTED]

would be useful for the group, but that only the members know what would be truly useful. Finally, your president states that while the board would greatly appreciate more involvement from members rather than less, any level of participation would be sincerely appreciated. The newsletter also contains an article entitled "[REDACTED]" by [REDACTED], a technical support engineer of the [REDACTED]. The article starts as follows:

"High performance microprocessors like the Intel's Pentium Pro, Pentium II, and Digital's Alpha have eliminated the performance gaps between the personal computer and the high end workstation. New microprocessor's (sic) and the development of high end 3D graphics cards, have moved Windows NT directly into the Technical Workstation Marketplace. Now that Windows NT is in the Technical Workstation Marketplace, where does [REDACTED] fit into this? [REDACTED] was first developed for Windows NT for release [REDACTED] over a year ago. In that past year, many people have migrated part or all of their UNIX environment into a Windows NT environment. This article will help those of you who are going to make that migration, or who have started, but are having trouble along the way."

The newsletter also provides a list of the breakout meeting abstracts of the vendor show, which include:

- (1) [REDACTED] at [REDACTED] (from [REDACTED])
- (2) [REDACTED] (from [REDACTED])
- (3) [REDACTED] from [REDACTED] (from [REDACTED], providing a library of standard mechanical and electromechanical components in [REDACTED] format),
- (4) Migrating from UNIX to NT (from [REDACTED]).
- (5) [REDACTED] (from [REDACTED]),
- (6) [REDACTED] (from [REDACTED] concerning technology that enhances [REDACTED]),
- (7) [REDACTED] (from [REDACTED] concerning, among other topics, other [REDACTED] users),
- (8) [REDACTED] (from [REDACTED]),
- (9) [REDACTED] (from [REDACTED] and [REDACTED]),
- (10) [REDACTED] (from [REDACTED])

In your letter dated [REDACTED] you state that the vendor show serves two purposes - first it serves as a user forum for users to distribute information, and, secondly, it serves as a means for vendors associated with [REDACTED] show their wares. You state that you have not placed an advertisement by [REDACTED], nor has [REDACTED] requested one.

In your letter dated [REDACTED] you state that while you are formally associated with the usage of [REDACTED], a product of [REDACTED], the activities of the group meetings are by no means limited to the discussion of [REDACTED] products. You state that the current members of your executive committee like to think that it is the lack of ties with [REDACTED] presentations [REDACTED] that has made your group a success; your group has not taken any direct [REDACTED] from any commercial organization or company, nor has it ever

been offered, which makes you truly an independent organization. You state that you do not believe that you have had, or will ever have, a strong affiliation with [REDACTED]

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for a profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 56-65, 1956-1 C.B. 199, holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption under section 501(c)(6) of the Code as a business league even though it performs functions which are of benefit to the particular industry and the public generally. The activities of the organization consisted of the maintenance of plan rooms for the convenience of members, where plans and specifications for local construction projects, together with the names of general contractors bidding on specific projects, are filed.

Rev. Rul. 73-411, 1973-2 C.B. 180, in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required by section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community, and it has been accepted that an organization seeking exemption under section 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all the commercial enterprises in a given trade community. Trade associations or business leagues under section 501(c)(6) are similar to chambers of commerce, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in section 501(c)(6) organizations is voluntary and open generally to all businesses and professional persons in the community.

Rev. Rul. 74-147, 1974-1 C.B. 136, holds that an organization whose members represent diversified businesses that own, rent, or lease one or more digital computers produced by various manufacturers, without regard to identity of the manufacturer of any such computer. The sole activity of the organization mentioned in the revenue ruling is the holding of semi-annual conferences, at which operational and technical problems relating to computer use are discussed. The revenue ruling concludes that the organization's primary objective, provision of a forum for the exchange of information which will lead to the more efficient utilization of computers by its members and other interested users, improves the overall efficiency of its members' business use of computers and qualifies for exemption under section 501(c)(6) of the Code.

Rev. Rul. 83-164, 1983-2 C.B. 85, describes an organization whose purpose is to conduct conferences for the dissemination of information concerning computers manufactured by one specific company, M. Although membership is comprised of various businesses that own, rent, or lease

computers made by M, membership is open to businesses that use other brands of computers. At the conferences, presentations are given primarily by representatives of M, as well as by other experts in the computer field. Problems related to members' use of M's computers are also discussed and current information concerning M's products are also provided. The revenue ruling holds that by directing its activities to businesses that use computers made by one manufacturer, the organization is improving business conditions in a segment of a line of business rather than in an industry as a whole and is not exempt under section 501(c)(6) of the Code. The revenue ruling concludes that by providing a focus on the products of one particular manufacturer, the organization is providing M with a competitive advantage at the expense of manufacturers of other computer brands.

In National Muffler Dealers Ass'n v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization whose membership consisted of the franchisees of one brand of muffler did not constitute a line of business within the meaning of section 501(c)(6) of the Code because a single brand represented only a segment of an industry.

In National Prime Users Group, Inc. v. U.S., 667 F. Supp. 250 (D.C. Md. 1987), the Court held that an organization which served the needs of users of a specific brand of computer promoted only a segment of a line of business and was not exempt under section 501(c)(6) of the Code.

In Guide International Corporation v. U.S., 948 F.2d 360 (7th Cir. 1991), aff'g No. 89-C-2345 (N.D. Ill. 1990), the Court concluded that an association of computers users did not qualify for exemption under section 501(c)(6) because it benefitted essentially users of IBM equipment.

The information you have submitted establishes that you are interested in establishing and improving the position in the market place of entities licensed to use the [REDACTED] product suite. These standards and systems, however, are in competition with other standards and systems. Restricting your membership to those entities who are licensed to use [REDACTED] does not open your organization up to the universe of entities in your line of business. Having access to a particular product does not define an "industry" within the meaning of section 501(c)(6) of the Code. It does not matter that your members are in competition with each other for a share of the market, or that your members are compatible, or that your program is an open system. The key consideration is whether your activities give a competitive edge to your special programs as opposed to another. [REDACTED] is the equivalent of a brand name, and consists of software produced by [REDACTED]. The restrictions inherent in your membership mean that you do not represent a line or lines of business, as required under section 501(c)(6) and as discussed in National Muffler Dealers Ass'n v. U.S., *supra*, especially since your efforts do not apply to a significant segment of your line of business. The fact that you consider yourself to be, and you may well be in fact, independent from [REDACTED] is not relevant for purposes of the applicability of Rev. Rul. 83-164, *supra*. We note specifically that [REDACTED] recognizes you as the official representative of its customers and that you are chartered, among other purposes, to provide problem identification and correction to [REDACTED], as well as providing software enhancement to [REDACTED] products. For these reasons, you are similar to the organizations discussed in National Prime Users Group, Inc. v. U.S. and Guide International Corporation v. U.S., both *supra*. Therefore, we have concluded that you are acting on behalf of a segment of an industry rather than acting on behalf of one or more lines of business within the meaning of section 501(c)(6).

Based on the statutory construction of section 501(c)(6) of the Code, it is a well established principle that section 501(c)(6) is intended to apply only to membership organizations which further the common business interests of their members and which are financed, at least in part, through membership dues. The legislative history of this statute, and the rules of statutory construction applicable to that section of the Code dealing with exempt organizations, provide that only membership organizations supported by membership dues or assessments are included in the term of the exemption under section 501(c)(6). Thus, an organization which is not in fact membership supported lacks the most significant characteristic common to organizations for which exemption was provided under section

501(c)(6). None of your ongoing financial support is derived from your members in the form of dues or assessments, since all of your financial support to operate your activities is received from vendors at your annual vendor show in the form of fees. Since your members are [REDACTED] users only, all the vendors at your vendor show exhibit [REDACTED] compliant products only, and thus the vendor fees would not be considered as proper membership support within the meaning of section 501(c)(6). Accordingly, as explained in Rev. Rul. 73-411, supra, you have not demonstrated a pattern of membership support and thus fail a critical test of exemption under section 501(c)(6).

Since your activities are not directed at promoting the common economic interests of all the commercial enterprises in a given trade community, your right to exemption under section 501(c)(6) of the Code, if any, must rest on your characterization as a business league or trade association. The information you have submitted, however, indicates that your membership is limited to those persons who use [REDACTED] software or are affiliated with its use as their primary profession and does not appear to be freely entered into by individuals and organizations in your area engaged in similar activities that do not use [REDACTED]. Therefore, we do not consider your membership to be open generally to all individuals or companies in the field of computers or any other related line of businesses in your community, and you are not considered to be a business league or trade association within the meaning of section 501(c)(6) as described in Rev. Rul. 73-411, supra.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(6) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

Internal Revenue Service  
OP:EO:T:2 [REDACTED] Room 6539  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

If you have any questions regarding this letter, please contact the person whose name and telephone number are shown in the heading.

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter  
Chief, Exempt Organizations  
Technical Branch 2

OP:EO:ED:T:2

7-20-99

0 PEBB TOL  
Carter

2-20-99